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#16

MAILED

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REEXAM UNIT

In re Application of	:	
Chikao Nishino et al.	:	DECISION
Appl. No. 09/672,146	:	DISMISSING
Filed September 28, 2000	:	PETITION
Atty. Dock. No. IWA-126-USA-P	:	

This reissue application is before the Office of Patent Legal Administration for consideration of the petition filed on July 9, 2002, under 37 CFR 1.175.

The petition is being considered as having been filed under 37 CFR 1.183, requesting waiver of the reissue application filing requirements of 37 CFR 1.172. Section 1.172 requires that oaths/declarations in broadening reissue applications be signed by all of the inventors.

The petition is dismissed.

DECISION

37 CFR 1.172 requires that a reissue oath/declaration be made by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged.

This reissue application, which seeks to broaden the scope of the claims, was filed with signatures of all five inventors on the original declaration. A supplemental declaration under 37 CFR 1.175(b)(1) was required by the examiner in the Office action of June 19, 2002.

Applicants then filed the present petition, accompanied by (1) a Supplemental Declaration signed by four of the five inventors, (2) a declaration of Satoru Takeda (General Manager, Patent Dept.) and (3) a declaration of co-inventor Hirotada Fukunishi, the Takeda and Fukunishi declarations both being captioned as "Declaration under 37 CFR § 1.47."

The petition and the accompanying Takeda and Fukunishi § 1.47 declarations merely state that the inventor Uetake refused to sign the Supplemental Declaration. This is a conclusion and has not been supported by a showing as to the unsigned inventor's unavailability or unwillingness to cooperate. A showing is required as to what efforts were made to obtain inventor Uetake's signature, and why they were not successful.

Since the showing as to extraordinary circumstances is incomplete, § 1.183 cannot be invoked in order to waive § 1.172. Accordingly, this petition is being dismissed.


CONCLUSION

Any petition provided in response to this decision must be accompanied by sufficient proof that the inventor (i) cannot be found or reached after a diligent effort or (ii) refuses to execute the declaration.

Any renewed petition in response to this decision must be filed within **ONE (1) MONTH** of the mailing date of this decision.

The file is being retained in the Office of Patent Legal Administration for the period set for response, after which it will be returned to Technology Center 1600 for further action not inconsistent with this decision.

Any question regarding this decision may be directed to Joseph Narcavage, Senior Special Projects Examiner, at (703) 305-1795.


Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration